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EX PARTE OR LATE FILED

Gerald Asch  
Director  
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January 18, 2002

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
TW-A325-12<sup>th</sup> Street Lobby  
Washington, D.C. 20554

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JAN 18 2002

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**EX PARTE**

**CC Docket No. 96-150 -Verizon Petition for Reconsideration and Request for Stay**

Dear Ms. Salas:

On January 17, 2002, the attached letter with attachments, regarding the above referenced proceeding, was submitted to Ms. Carol Matthey, Mr. Tim Peterson and Mr. Tony Dale in response to Ms. Matthey's request for additional information regarding Verizon's Petition for Reconsideration and Request for Stay.

An original and one copy of this Ex Parte are being filed in the Office of the Secretary today, January 18, 2002. Please include it in the public record of the above referenced proceeding as required under Section 1.1206(b)(1) of the Commission's rules.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gerald Asch".

Attachment

No. of Copies rec'd 071  
List A B C D E

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Director  
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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Carol Matthey  
Federal Communications Commission  
Deputy Chief Common Carrier Bureau  
445 12<sup>th</sup> Street, S.W. – Room 5C-451  
Washington, DC 20554

**Re: CC Docket No. 96-150; Verizon Petition for Reconsideration and Request for Stay**

Dear Ms. Matthey  
Carol,

In its petition for reconsideration, Verizon demonstrated that the Commission should reconsider its denial of Verizon's request for confidential treatment of certain information identified as "proprietary" in the redacted version of the auditor's report in this proceeding. If the Commission believes that release of this information is necessary to allow public comment on the audit report, it should release the data only to persons who execute the Commission's standard protective agreement. Attached is a copy of a proposed agreement, similar to the draft that AT&T submitted when it requested access to this information.

The section 272(d)(2) requirement for issuance of a public report is not inconsistent with the Commission's longstanding practice under section 220(f) of the Act of protecting confidential information in an audit from public disclosure. When the Commission adopted the procedures for the section 272 audit in the *Accounting Safeguards Order*, it specifically relied on its authority under section 220 and it specifically applied the section 220 safeguards. *See Implementation of the Telecommunications Act of 1996; Accounting Safeguards Under the Telecommunications Act of 1996*, 11 FCC Rcd 17539 (1996), ¶¶ 204, 285. The Commission decided that "[w]orkpapers related to the biennial audits, including material obtained from the examined entities, will receive confidential treatment consistent with section 220(f) and the Commission's policy for Part 64 audits. . . . Section 272(d) limits access to audit workpapers and documents under section to representatives of the Commission and of the State public utility Commission's. We will not extend this access to other parties . . . . This is clearly beyond the scope of section 272(d)." Clearly, the confidential information in the workpapers that was included in the audit report remains confidential and subject to the protections of section 272(d) and section 220(f). If the Commission decides to release these data to the public, it should follow its consistent practice of requiring any person that requests access to these data to sign the standard protective agreement.


Such a decision would not be inconsistent with the requirement under section 272(d)(2) that the results of the audit be made available for public inspection. The redacted version of the report fully meets that requirement. The fact that the Commission sought to go further and allow interested parties the opportunity to see certain data that was included in the workpapers does not change the fact that such information was not necessary to have been included in the report in the first place. While Verizon believes the Commission erred in including this workpaper data in the audit report, the Commission can satisfy all concerns by allowing the information to be viewed only subject to a protective agreement.

Use of a standard protective agreement in this proceeding would still allow parties to comment on all aspect of the report, including the information that Verizon seeks to keep confidential. Interested parties may examine the information and provide comments to the Commission on the audit report, provided that any comments are submitted in redacted form where they include information identified as confidential. This allows the public to provide their evaluation and assessment of a carrier's compliance with the section 272 safeguards, as Congress intended. The public has a similar right of comment in other Commission proceedings. However, the Commission has consistently required commenters in such proceedings to enter into protective agreements where they need access to confidential information in order to analyze the record and provide meaningful comments to the Commission. For instance, when carriers submit section 271 applications, the Commission issues a standard protective order to allow commenters complete access to confidential data for purposes of commenting on whether the carrier has met the section 271 checklist. Similar safeguards are applicable here.

The attached protective agreement would permit interested persons to obtain the confidential information in the audit report solely for purposes of commenting in this proceeding on Verizon's compliance with the section 272 safeguards. It would limit access to counsel of record and in-house counsel and to persons assisting them in preparing comments, but not to those involved in competitive decision-making.

All of the confidential information in the audit report should be protected under the agreement. To assist the Commission in evaluating Verizon's request, attached is a description of the information in the audit report for which public release without a protective order would cause the greatest competitive harm to Verizon. Please let me know if you need any additional information.

Sincerely,



Attachments

cc: Mr. T. Peterson  
Mr. A. Dale

## **ATTACHMENT**

### **DESCRIPTION OF COMPETITIVE HARM FROM DISCLOSURE**

#### Objectives V & VI, Procedure 9, pp. 21-23

Tables 9, 10 and 11 disclose monthly charges from the Verizon local exchange carrier to its long distance affiliate for joint marketing activities relating to business service centers, telemarketing centers, and sales agents. By comparing these charges to the unit prices in the posted contracts, competitors could determine the volumes of calls that are handled and the numbers of sales that are made through outbound and inbound sales efforts in the business offices and telemarketing services. This would allow competitors to evaluate the effectiveness of Verizon's sales techniques as compared to their own and to analyze the factors affecting Verizon's ability to penetrate the market. They could analyze the monthly pattern of call volumes and associate it with Verizon's advertising and promotional efforts to evaluate the efficacy of these efforts. They could also assess the relative success of different sales approaches – e.g., direct marketing v. Internet telemarketing. With this knowledge, they could plan counter-strategies and gain a competitive advantage over Verizon in the markets covered by the audit as well as in new markets that Verizon will enter in the future.

#### Objectives V & VI, Procedure 13, p. 25

Table No. 12 discloses the prices that Bell Atlantic Network Integration paid non-affiliated companies for routers, cabinets, and ethernet modems. The dollar amounts shown on this table reflect the invoiced cost from the supplier that was then transferred to the section 272 affiliate and appears in its books as the original cost, as is required by procedure 13. In two cases, the table identifies the model numbers of the equipment purchased. One of the primary ways that a business obtains a competitive advantage is by obtaining equipment and supplies at a lower price than its competitors are able to obtain from the same vendors. The Commission's decision not to give Verizon confidential treatment of these data puts all suppliers on notice that any favorable prices they give Verizon may later enter the public domain and hinder their ability to negotiate with other customers. This inevitably will harm Verizon's ability to obtain the best prices from suppliers.

Objective VIII, Procedures 3 & 4, Tables 14a, 14b, 14c, 15, 16, pp. 34-37, 39

The information on Tables 14a, 14b, 14c, 15, and 16 about the volumes of exchange access services that Verizon's section 272 network affiliate purchased each month as Verizon began offering interLATA services in New York and the delivery dates for these access services can be used by Verizon's competitors to assess how much Verizon relies on its own network facilities and how quickly it gears up its facilities-based services to meet demand as it enters a market. Competing interexchange carriers do not allow Verizon to publish these types of data, which are considered sensitive customer proprietary network information.

Objective X, Procedure 5, pp. 44-46 (pp. 45-47 in the redacted report)

The data in the tables on these pages provide Verizon's monthly revenues for retail National Directory Assistance ("NDA") Service, by state. NDA service is non-regulated and the market for this service is highly competitive. The information on these tables lets Verizon's competitors know the locations of Verizon's most lucrative markets and which ones are growing the fastest. This could help them in targeting their own sales and marketing efforts by either concentrating on the largest or fastest growing markets or by targeting the areas where Verizon has been less successful. By comparing similar information in subsequent audits, competitors will be able to analyze the success of Verizon's marketing strategies and the development of each market.

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

**RECEIVED**

JAN 18 2002

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Accounting Safeguards Under the  
Telecommunications Act of 1996

CC Docket No. 96-150

**PROTECTIVE ORDER**

**Adopted: January \_\_, 2002**

**Released: January \_\_, 2002**

By the Common Carrier Bureau:

1. Pursuant to section 272, PricewaterhouseCoopers LLP ("the Auditor") filed redacted and *non*-redacted Reports of Independent Accountants on Applying Agreed-Upon Procedures on June 11, 2001 ("Auditor's Initial Biennial Report") and June 18, 2001 ("Auditor's Supplemental Biennial Report") ("collectively "the Reports"). The Common Carrier Bureau issued a Public Notice seeking public comments on these reports on June 21, 2001. The Commission has concluded that to the extent these Reports contain proprietary or confidential information, the unredacted versions should be made available pursuant to a protective order. Consequently, the Common Carrier Bureau enters this Protective Order to ensure that the information identified by Verizon, Verizon's Section 272 affiliates and other third parties to be confidential and proprietary are afforded protection.

2. Subject to compliance with this Protective Order, Authorized Representatives identified in paragraph 5 may inspect the data specified above for which Verizon has requested confidential treatment in this proceeding by contacting the Auditor at;

3. This Protective Order is intended to facilitate and expedite the review of documents containing trade secrets and commercial or financial information obtained from a person and which is privileged or confidential. It reflects the manner in which "Confidential Information," as that term is defined herein, is to be treated. The Protective Order is not intended to constitute a resolution of the merits concerning whether any Confidential Information would be released publicly by the Commission upon a proper request under the Freedom of Information Act or other applicable law or regulation, including 47 C.F.R. § 0.442.

4. *Non-Disclosure of Redacted Information.* Except with Verizon's prior written consent, or as hereinafter provided under this Protective Order, the specific information redacted by the Auditor in the Reports may not be disclosed by a reviewing party to any person. "Redacted Material" shall mean any information marked "proprietary" in the redacted versions of the Reports.

5. *Permissible Disclosure.* Subject to the requirements of paragraph 7, the non-redacted version of the Reports may be reviewed by outside counsel of record and in-house counsel who are actively engaged in the conduct of this proceeding, provided that those in-house counsel seeking access are not involved in competitive decision-making, *i.e.* counsel's activities, association, and relationship with a client that are such as to involve counsel's advice and participation in any or all of the client's business decisions made in light of similar or corresponding information about a competitor. Subject to the requirements of paragraph 7 and subject to the obligation to secure the non-redacted version of the Reports in accordance with the terms of this order, such counsel may disclose non-redacted version of the Reports to: (i) the partners, associates, secretaries, paralegal assistants, and employees of such counsel to the extent reasonably necessary to render professional services in this proceeding; (ii) Commission officials involved in this proceeding; (iii) outside or in-house consultants or experts retained for the purpose of assisting counsel in these proceedings; (iv) employees of such counsel involved solely in one or more aspects of organizing, filing, coding, converting, storing, or retrieving data or designing programs for handling data connected with this proceeding; and (v) employees of third-party contractors performing one or more of these functions.

6. *Access to Confidential Documents.* Persons described in paragraph 5 shall have the obligation to ensure that access to the non-redacted version of the Report is strictly limited as prescribed in this Protective Order. Such persons shall further have the obligation to ensure: (i) that the non-redacted version of the Reports are used only as provided in this order; and (ii) that the non-redacted version of the Reports are not duplicated except as necessary for filing at the Commission under seal as provided in paragraph 9.

7. *Procedures for Obtaining Access to the Non-redacted Version of the Reports.* In all cases where access to the non-redacted version of the Reports is permitted pursuant to paragraph 5, and before reviewing or having access to the non-redacted version of the Reports, each person seeking such access shall execute the Acknowledgement of Confidentiality (see Appendix A) to the Commission and to the Auditor; the Auditor shall immediately send a copy of this Acknowledgement to Verizon by certified mail, return receipt requested, so that it is received by Verizon seven business days prior to such person's reviewing or having access to the non-redacted version of the Reports. Verizon shall have an opportunity to object to the disclosure of that portion of the non-redacted version of the Reports that contain confidential or proprietary information to any such Party. Any objection must be filed at the Commission and served on counsel representing, retaining or employing such person within five business days after the Auditor receives a copy of that person's Acknowledgement of Confidentiality. Until such objection is resolved by the Commission and any court of competent jurisdiction prior to any disclosure, and unless that objection is resolved in favor of the person seeking access, persons subject to an objection from Verizon shall not have access to the relevant portion of the non-redacted version of the Reports.

8. *Requests for Additional Disclosure* If any person requests disclosure of the non-redacted version of the Reports outside the terms of this Protective Order, such requests will be treated in accordance with Sections 0.442 and 0.461 of the Commission's rules.

9. *Use of Confidential Information.* Persons described in paragraph 5 may, in any documents that they file in this proceeding, reference information found in the non-redacted version of the Reports or derived therefrom (hereinafter, "Confidential Information"), but only if they comply with the following procedure:

a. Any portions of the pleadings that contain or disclose Confidential Information must be physically segregated from the remainder of the pleadings;

b. The portions of the pleadings containing or disclosing Confidential Information must be covered by a separate letter to the Secretary of the Commission referencing this Protective Order;

c. Each page of any party's filing that contains or discloses Confidential Information subject to this Order must be clearly marked: "CONFIDENTIAL -- NOT FOR PUBLIC INSPECTION -- SUBJECT TO PROTECTIVE ORDER IN CC Docket No. 96-150" and

d. The confidential portion(s) of the pleading shall be served upon the Secretary of the Commission and any party that is authorized to review this information under the Protective Order. Such confidential portions shall be served under seal, and shall not be placed in the Commission's Public File. A party filing a pleading containing Confidential Information shall also file a redacted copy of the pleading containing Confidential Information, which copy shall be placed in the Commission's public files. Parties may provide courtesy copies under seal of pleadings containing Confidential Information to the Commission staff.

10. *No Waiver of Confidentiality.* Disclosure of Confidential Information as provided herein by any person shall not be deemed a waiver by any Submitting Party of any privileged or entitlement to confidential treatment of such Confidential Information. Reviewing parties, by viewing this material: (a) agree not to assert any such waiver; (b) agree not to use information derived from any confidential materials to seek disclosure in any other proceeding; and (c) agree that accidental disclosure of Confidential Information by a Submitting Party shall not be deemed a waiver of any privilege or entitlement as long as the Submitting Party takes prompt remedial action.

11. *Subpoena by Courts of Other Agencies.* If a court of another administrative agency subpoenas or orders production of Stamped Confidential Documents or Confidential Information that a party has obtained under terms of this order, such party shall promptly notify the Auditor, who shall immediately notify each affected Submitting Party, by certified mail, return receipt requested, of the pendency of such subpoena or order. Consistent with the independent authority of any court or administrative agency, such notification must be accomplished such that the Submitting Party has a full opportunity to oppose such production prior to the production or disclosure of that portion of the non-redacted version of the Reports or pleadings of filings herein that contains its confidential or proprietary information.



12. *Client Consultation.* Nothing in this order shall prevent or otherwise restrict counsel from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of the non-redacted version of the Reports provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not disclose the non-redacted version of the Reports or Confidential Information.

13. *Violations of Protective Order.* Persons obtaining access to the non-redacted version of the Reports or Confidential Information under this order shall use the information solely for preparation and the conduct of this proceeding as delimited in paragraphs 6, 9, and 12, and any subsequent judicial proceeding arising directly from this proceeding and, except as provided herein, shall not use such information for any other purpose, including business, governmental, commercial, or other administrative, regulatory or judicial proceedings. Should a party that has properly obtained access to Confidential Information under this Protective Order violate any of its terms, that party shall immediately convey that fact to the Commission and to the Auditor, who shall in turn inform Verizon. Further, should such violation consist of improper disclosure of Confidential Information, the violating party shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order.

14. *Prohibited Copying.* If in the judgment of the Auditor, after consultation with Verizon, a redacted segment of the report contains information so sensitive that it should not be copied by anyone, it shall bear the additional legend "Copying Prohibited," and no copies of that redacted segment, in any form, shall be made. Application for relief from this restriction against copying may be made to the Commission, with notice to the Auditor who shall in turn, provide appropriate notice to the affected Submitting Party.

15. *Termination of Proceeding.* The provisions of this Protective Order shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding (which includes any administrative or judicial review), the non-redacted version of the Reports and all copies of same shall be returned to the Auditor. No material whatsoever derived from the non-redacted version of the Reports may be retained by any person having access thereto, except counsel to a party in this proceeding (as described in paragraph 5) may retain, under the continuing strictures of this Protective Order, two copies of pleadings containing confidential information prepared on behalf of that party. All counsel of record shall make certification of compliance herewith and shall deliver the same to the Auditor not more than three weeks after conclusion of this proceeding.

16. *Authority* This Order is issued pursuant to Sections 4(i), 214(a), 220, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214(a), 220, and 310(d), Section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b), and authority delegated under Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, and is effective upon its adoption.

*ACKNOWLEDGEMENT OF CONFIDENTIALITY*

I, \_\_\_\_, hereby declare under penalty of perjury that I have read the Protective Order in these proceedings, and that I agree to be bound by its terms pertaining to the treatment of Confidential Information submitted by parties to this proceeding. I understand that the Confidential Information shall not be disclosed to anyone except in accordance with the terms of the Protective Order and shall be used only for purposes of the proceedings in this matter. I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission. I acknowledge that this Protective Order is also a binding agreement with the Submitting Party.

(signed)\_\_\_\_

(name)\_\_\_\_

(representing)\_\_\_\_

(title)\_\_\_\_

(employer)\_\_\_\_

(address)\_\_\_\_

(phone)\_\_\_\_

(date)\_\_\_\_\_